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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	85930329
Applicant	MMDT Stretch, LLC
Applied for Mark	STRETCH LA
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Serial No. 85930329  
Mark: STRETCH LA  
Applicant: MMDT Stretch, LLC  
Examining Attorney: Sean Crowley

**EX PARTE APPEAL  
APPLICANT'S REPLY BRIEF**

The Applicant, MMDT Stretch, LLC, by counsel, hereby respectfully replies to the opposition brief of the Examining Attorney filed on September 18, 2015 concerning the Examining Attorney's refusal to register the mark STRETCH LA in standard characters.

It is respectfully submitted that the Examining Attorney did not satisfy the criteria required to demonstrate that the mark "STRETCH LA" is primarily geographically descriptive of applicant's identified services.

### **REPLY ARGUMENT**

#### **A. Legal Standard.**

To establish a prima facie case for refusal to register a mark as primarily geographically descriptive, the Examining Attorney must show that:

"(1) the primary significance of the mark is a generally known geographic location (see TMEP §§1210.02-1210.02(b)(iv);

(2) the goods or services originate in the place identified in the mark (see TMEP §1210.03); **and**

(3) purchasers would be likely to believe that the goods or services originate in the geographic place identified in the mark (see TMEP §§1210.04-1210.04(d))."

It is respectfully maintained that the Examining Attorney failed to satisfy the first and second prongs of this test (the "Geographic Descriptiveness Test") and that refusal to register must be denied accordingly.

**B. Brief Analysis Review.**

- i. The primary significance of the mark “STRETCH LA” is not a generally known geographic location.**

**Applicant’s Argument in a Nutshell:** Applicant provided considerable evidence and other support to demonstrate that the mark is not primarily geographic. In its correspondences with the Examining Attorney, Applicant has declared, under penalty of perjury, that the primary significance of “LA” is to denote a healthy lifestyle that Applicant believes consumers would associate with Los Angeles. In its response to Office Action dated March 4, 2014, Applicant states that the “Stretch” component is the primary element in the pending mark. Applicant has stated that while “LA” connotes Los Angeles, “it is also associated with fitness, as the inhabitants of Los Angeles are generally thought to be in better physical shape than those that reside elsewhere in the United States.”

**Examining Attorney’s Argument in a Nutshell:** The Examining Attorney was not persuaded by Applicant’s declaration that the primary significance of “LA” is to denote a healthy lifestyle, rather than the City or County of Los Angeles. Applicant bolstered its position by the “LA Fitness” registrations by demonstrating that its position was credible and consistent with the position of another applicant. Applicant is not directly relying on the “LA Fitness” registrations, but using them to support the credibility of its position as to what “LA” connotes.

- ii. The Services Do Not Originate In the Place Identified in the Mark.**

**Applicant’s Argument in a Nutshell:** This is a service business. There is nothing for a customer to conclude that services originate in Los Angeles unless the customer is receiving services in Los Angeles itself. A customer in Chicago will believe the services originate there

(how could they originate elsewhere) as the stretching services will be provided locally. The same holds true with customers otherwise located outside of the greater Los Angeles area. There will be no basis for these customers to believe that the services originate in Los Angeles. The result might be different for goods, but with services, the “LA” reference can not realistically be deemed to refer to the origin of the services unless the customer is actually receiving the services in Los Angeles. As mentioned in Applicant’s brief, this is similar to an LA Fitness customer in Chicago receiving personal trainer services at an LA Fitness location in Chicago. That customer could not be under the impression that the services originate anywhere but Chicago.

**Examining Attorney’s Argument in a Nutshell:** Services will be provided to some extent in the greater Los Angeles area and hence this is dispositive, notwithstanding Applicant’s intention to offer the services outside of the greater Los Angeles area.

It is respectfully submitted that while the services are intended to be provided at locations within and without the greater Los Angeles area, a customer receiving the services will not be confused as to their origin. This would similarly be the case of an LA Fitness customer receiving personal trainer services at a location in Chicago, Illinois, for example.

**iii. The Services-Place Association (Third Prong).**

No argument was provided by Applicant.

**CONCLUSION**

The Examining Attorney has failed to satisfy the first and second prongs of the Geographic Descriptiveness Test, for reasons set forth in the Applicant’s Appeal Brief. The Examining Attorney has not carried Examining Attorney’s burden. Applicant respectfully

requests that the Board grant Applicant's Ex Parte Appeal and allow for the registration of the 'STRETCH LA' mark.

Dated this 7<sup>th</sup> day of October, 2015

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